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CURRENT TOPICS

Stamp Duty on Conveyances, etc.

IF cl. 63 of the Finance Bill is enacted in its present form—and this is by no means certain, as the paragraph below shows—substantial sums of stamp duty will be saved by purchasers of small houses who are able to postpone completion until after 31st July. At present the full 2 per cent. rate of duty normally applies to conveyances, etc., in respect of which the consideration exceeds £1,950, while the rate of 1 per cent. is enjoyed only where the consideration does not exceed £1,500. Between these two figures the rate of duty is, in effect, a sliding scale increasing progressively at every successive £50 step in the scale. From 1st August next, however, it is proposed to extend the benefit of the 1 per cent. rate of duty to transactions exceeding £1,500 but not exceeding £3,000. On transactions between £1,950 and £3,000, therefore—and these may reasonably be taken to cover the majority of small house purchases to-day—the potential saving effected by completion on or after 1st August is a full 1 per cent., i.e., not less than £19 10s. and possibly as much as £30; below £1,950 the advantage of deferring completion becomes progressively less as the consideration approaches £1,500, although even on transactions not exceeding £1,550 a saving of £2 is obtained. This is not all, however. If the consideration, although more than £3,000, does not exceed £3,450, the rate of duty will be 1½ per cent. and not 2 per cent. Thus the saving, although proportionately less than in the £1,950–£3,000 range, will nevertheless be substantial in absolute terms. On a £3,050 transaction £15 5s. is saved; on one of £3,450 the saving is £17 5s. These reduced rates are, of course, made dependent on the inclusion in the instrument of the appropriate certificate of value, in the absence of which the basic 2 per cent. rate will automatically be chargeable. After the clause has been debated in the Commons we hope to discuss its implications more fully.

Possible Amendment: A Warning

UNFORTUNATELY, an amendment to the clause has been tabled which would have the effect of bringing the reduced rates into operation on the day following that on which the Finance Act is passed. The purpose of this amendment is not clear, but it may be that the Government are not confident of having the Act on the statute book by 1st August. However that may be, the amendment, if accepted, has inconvenient consequences for solicitors. Although the actual date of operation of the reduced duties would not perhaps be likely to differ by more than a few days either way from the specific date at present proposed in the Bill, it is one thing to ask a vendor to agree to a postponement of completion to a fixed day, but quite another to postpone, so to speak, *sine die*. Moreover, there is a certain aptness attaching to 1st August as a date for the change, since the last change of rates took effect on 1st August, 1947. Investigation of title in future years would be simplified by the knowledge that the "1947 rates" obtained for precisely five years. No doubt also uncertainty as to the date of operation will delay the appearance of published guides to the new

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rates. All in all, the amendment is one to be regretted, and—if indeed it is not too late by the time these words appear—we express the hope that solicitor-M.P.'s will oppose it. If the 1st August cannot for good reason be retained, then at least let a specific date be substituted so that vendors and purchasers, and their advisers, may know where they stand.

Costs against the Police

THE usual attitude of magistrates is that costs should not be awarded against the police unless the circumstances are such that the prosecution could not have been brought with any reasonable hope of success. The unfortunate (and innocent) citizen when he steps down from the dock not infrequently inquires of his solicitor why this should be, and he is not always entirely satisfied when told that the award of costs against the police automatically on acquittal would discourage them unduly from prosecuting. It is pleasant, therefore, to record that the West London magistrate, Mr. E. R. GUEST, awarding £5 5s. costs against the police recently, said: "I always grant costs, if they have been incurred, to a successful defendant unless he has acted in such a way as to be the author of his own misfortune. This is one of the things the public ought to bear in connection with the proper administration of justice."

Fish Is Not Meat

IT is always news fit for headlines when a judicial pronouncement is made on the meaning of everyday words. Last week a finding of the Court of Appeal that fish was not meat within the meaning of the Transport Act, 1947, received special attention from the Press. It would be as well to point out to the public, when such topics are discussed, that the law requires courts to construe words according to their ordinary and everyday meaning, and not according to an artificial or technical meaning, unless Parliament expressly ordains that some special meaning shall apply, or unless the everyday meaning of the word is in fact technical. This was illustrated in the court's judgment. LORD GODDARD said: "In the days of Dr. Johnson and earlier, it was a common thing to say that someone was partaking of meat, meaning food. Meat then meant a meal, and if a man was partaking of his meat he was partaking of the solid part of his food. It is shown by the Oxford Dictionary that that has now become an archaic use of the word. When people now refer to meat, they mean butchers' meat. Under this statute meat does not include fish."

Building Societies

AT the annual conference of the Building Societies Association on 14th May, the Chairman, Mr. WETHERILL, commented on the Government decision that local authorities may sell their houses to tenants of them and welcomed an extension of the principle of home-ownership. He saw no reason why tenants should not approach societies on this matter and they should be made aware of the fact that they have complete liberty in deciding from whom to borrow any money they need in order to effect the change from tenancy to ownership. In a reference to interest rates he said that the great majority of member societies had adopted the recommendation to consider increasing the rates paid to shareholders and ordinary depositors to $2\frac{1}{2}$ and 2 per cent. respectively and the rate to be charged to borrowers wishing to become owner-occupiers to $4\frac{1}{2}$ per cent. He also mentioned that the total volume of money invested in building societies increased in 1951 by £95m., reaching a record total of almost £1,263m. The total of £268m. advanced on mortgage loans in 1951 compared with £269m. in 1950. On the question of the maintenance of properties he said some societies made it a definite practice to encourage borrowers to make regular investments in order to provide for the cost of repairs. He was sure that all societies tried to help borrowers, both with advice and with financial assistance, in dealing with this important matter. It was normal practice for a society to make an additional advance to a borrower who had repaid part of his loan precisely in order to help him with those improvements, alterations or repairs which were among the privileges and responsibilities of owning one's home.

The Stockport Incorporated Law Society

THE membership of the Stockport Incorporated Law Society, according to its report for 1951–52, is sixty-four, and the present year is the forty-ninth since its incorporation. The Law Society's recent proposals concerning the relationship between itself and provincial societies, as well as the new conditions of sale, and the question of solicitors acting for both vendor and purchaser, were considered in the report. It also draws attention to the fact that estate agents without any technical qualifications or responsibility to any professional body are in a position to complete a contract immediately, but solicitors, in most cases, feel under an obligation to make a preliminary search and in some districts this takes up to fourteen days. Reference is made to the 1948–49 Annual Report of the Council of The Law Society, where it was stated that the Lord Chancellor had promised to consider for possible inclusion in the next Solicitors Bill a clause making it an offence for a person who is not either a barrister or a practising solicitor to prepare a contract for the sale of land for reward. The honorary secretary was instructed, following a complaint, to circularise all estate agents practising in the district of the Society and, with one exception, all expressed agreement with the views held by the committee.

Military Law and War Crimes

THE EARL OF CORK AND ORRERY'S motion in the Lords that the principles laid down in chapter 14 of the Manual of Military Law should be reconsidered by a tribunal before publication of the revised edition was withdrawn after a statement by the LORD CHANCELLOR as to the method of drafting chapter 14. The Lord Chancellor said that from the beginning of the century it had always been the practice for a distinguished international lawyer to be called in to draft this chapter of the manual. The present proposal was in accordance with previous practice. After Professor LAUTERPACHT had prepared the first draft it would be submitted to the various interested directorates of the War Office, in particular the Directorate of Military Intelligence and the Directorate of the Army Legal Services, for close scrutiny and suggested amendments. After this scrutiny the text would have to be considered by the other service departments and the Foreign Office, and when it had been agreed upon it would, in all probability, be submitted for the consideration of the Dominion Governments. It was considered of the greatest importance that the final text of this chapter should be agreed with the closest collaboration of the United States War Department, who were at present undertaking substantially similar work on their publication on the rules of land warfare. He did not think Professor Lauterpacht was departing in any way from what he wrote in 1944. In substance he was adhering to what was the commonly accepted opinion of international lawyers. It had been the law for more than two centuries that a soldier was only bound to obey a lawful order.

Procedure

XVIII—SERVICE ON CORPORATIONS AND OTHER BODIES

ALTHOUGH a corporation, aggregate or sole, is by English law in one sense an impersonal conception, since it is to be distinguished from the individual or individuals who comprise it, it yet remains a " person " within the meaning of modern English statutes (Interpretation Act, 1889, s. 19), and indeed as a matter of legal nomenclature generally. And so it can be affected by those types of process which require personal service, such as a writ, originating summons or petition initiating an action or matter in the High Court. Similarly, it may be necessary to effect service of proceedings directed against certain groups of persons, as mentioned below, though an unincorporated body, unless it be a partnership, cannot be sued as such.

The R.S.C. make special provision in these cases. It is an omnibus, residuary kind of provision, for Ord. 9, r. 8, in which it is contained, begins with the words " in the absence of any statutory provision regulating service of process." Subject to any such statute applicable to the case, a corporation aggregate is served through the " mayor or other head officer " or through the " town clerk, clerk, treasurer or secretary " ; the inhabitants of a hundred or other like district through the high constable or, if none, any other acting chief officer of police of the appropriate county ; and the inhabitants of any county of a city or town, or the inhabitants of any franchise, liberty, city, town or place other than a hundred through " some peace officer thereof." Nowadays, of course, local authorities (all of which, down to parish councils, are corporate) exercise such wide administrative powers and are subject to such extensive obligations that proceedings against the inhabitants of a place are virtually obsolete. Formerly they were a common feature of the poor law.

The best-known statutory provision of the kind referred to in the opening phrase of r. 8 is that now enacted in s. 437 (1) of the Companies Act, 1948. That subsection makes of the registered office, which every company incorporated under the Act or under previous Companies Acts must maintain and record, a special kind of address for service, good not merely for the purpose of the R.S.C. but for every purpose. Any document may be served on such a company by leaving it at or sending it by post to the registered office.

It would be wrong to assume that this authorisation removes all practical difficulty in serving a limited company. It is not unknown for the normal search in the register kept by the Registrar of Joint Stock Companies at Bush House to reveal a division of counsels within the same blue file cover. The statutory notice of situation of the registered office may give one address and the latest annual return another. The completion of the space provided in the annual return is probably effective as a fresh notification of the registered address, but the safe course in this instance is undoubtedly to attempt service at both addresses. If, as may happen, it is desired to serve a company which is moribund it may be worth sending separate copies of the process to any directors whose addresses are disclosed. Such a course can do no harm, and may in practice avert tactical objections to the service effected at a deserted address.

In any case, s. 437 (1) appears to be permissive only. Thus it was held in *Watson* v. *Sheather* (1886), 2 T.L.R. 473, that it was good service on a company to leave a writ with a director. True, the writ was in that case handed to the director at the company's office ; but in reversing Field, J. (who appears to have thought that it was the postman alone who could do the " leaving "), the Court of Appeal held the service to be effective under Ord. 9, r. 8, apart altogether from the contemporary Companies Act provision. Rule 8 does not refer to the place of service at all.

Again it was said by Hall, V.-C., in a case where it was contended that a writ should, pursuant to the appropriate statute, have been served on the secretary at the company's office (*Re Taylor* (1878), 8 Ch. D., 183), that if the secretary waived service at the company's office by asking to be served elsewhere that would be good.

Section 437 (1) of the 1948 Act does not specify registered post, and is on that account in contrast with the practice as to serving documents other than originating process constituted by Ord. 67, r. 2, discussed in the article at p. 273, *ante*. Out of this distinction there grew a tradition, recognised by decisions in chambers since 1883, which regarded service on a company by registered post as bad. It was assumed, perhaps, that the Legislature had intended to indicate unregistered post because an addressee has the opportunity of refusing a registered letter, or because there may be delay in delivering registered mail arising from the necessity for the postman to find some person at the address who is willing to sign a receipt for the letter. In *T.O. Supplies (London), Ltd.* v. *Jerry Creighton, Ltd.* [1951] 2 T.L.R. 993 ; 95 SOL. J. 730, Devlin, J., in a careful judgment spurned this tradition.

Goods had been sold and delivered, and without letter before action a writ had been issued claiming their price. The defendants' registered office was at the address of their accountants, and to this address the plaintiffs' solicitors sent a copy of the writ by registered post. In accordance with their arrangement with the defendants, the accountants re-addressed the registered letter to the defendants' business premises, where, unfortunately, it arrived during a period when the defendants' office on the premises was closed for staff holidays. No one there was willing to sign for it in the absence of the clerical staff, with the result that the letter containing the copy writ began a journey back to the plaintiffs' solicitors *via* the Dead Letter Office. Meanwhile, no appearance, judgment in default and execution. Aware for the first time of the existence of the proceedings, the defendants then entered an appearance and applied by summons to set aside the judgment, and the master set it aside on the ground that service should not have been by registered post.

Devlin, J., found no authority to guide him. In spite of the long-standing practice, he said, the matter must be determined on the construction of the statute. " Post," the learned judge held, was wide enough in its natural meaning to cover both registered post and ordinary post. As a matter of construction it was not possible to limit it to one or the other. The plaintiffs had therefore acted correctly, and though the judgment was still set aside because grounds of defence were disclosed by the affidavits, the defendants had to pay the costs.

J. F. J.

A Conveyancer's Diary

RESTRICTIVE COVENANTS: WHAT IS "ASCERTAINABLE" LAND?

THERE are three, and only three, sets of circumstances in which a restrictive covenant not between landlord and tenant will be upheld as against any person other than the covenantor at the suit of any person other than the covenantee, and before embarking on the consideration of any case relating to restrictive covenants it is essential to be quite clear in one's own mind to which of these three categories the case in question should be assigned. The first category comprises those cases where the covenant was imposed as part of a building scheme. The conditions which it is necessary to show as having been satisfied before a covenant will be upheld as part of a building scheme were formulated by Parker, J., in *Elliston* v. *Reacher* [1908] 2 Ch. 374, and have never been questioned since then. The second category comprises those cases where a covenant has been annexed to a parcel of land so as to run with it, in the sense that the successor in title of the covenantee can enforce the covenant without the necessity of showing that the benefit of the covenant has been assigned to him. A good example of this kind of case will be found in *Rogers* v. *Hosegood* [1900] 2 Ch. 388, but when considering whether there has been a sufficient annexation of a covenant to bring it within this class of case it is important to bear in mind the somewhat refined significance given to the requirement of annexation in *Re Ballard's Conveyance* [1937] Ch. 473. Lastly, there come the cases where, without a building scheme or any express annexation of the covenant to any land, a restrictive covenant may be upheld if it can be shown (to quote the headnote in *Re Union of London and Smith's Bank, Ltd.'s Conveyance; Miles* v. *Easter* [1933] Ch. 611): "(i) that the covenant was taken for the benefit of ascertainable land of the covenantee capable of being benefited by the covenant, and (ii) that" [the plaintiff] "is an express assign of the covenant."

The principal interest of the recent important decision in *Newton Abbot Co-operative Society, Ltd.* v. *Williamson and Treadgold, Ltd.* [1952] Ch. 286 lies in the interpretation which Upjohn, J., has given to the word "ascertainable" in this context in circumstances which, in the interval between *Miles* v. *Easter* and the present case, have been regarded as uncovered by authority.

The facts of this case can be briefly stated. A was the owner of two neighbouring shops. In one shop A carried on the business of an ironmonger, and in the other shop B, who was A's tenant, carried on the business of a grocer. A sold the second shop to B, and in the conveyance B covenanted with A that B and the persons deriving title under him would not carry on on the premises the business of an ironmonger. The plaintiffs eventually became the owners of the first shop, and the defendants of the second shop, and the action was an action by the plaintiffs to restrain the defendants from carrying on in the second shop the business of an ironmonger, contrary to the covenant between B and A. Upjohn, J., held that the benefit of the covenant had not been annexed to the first shop so as to be enforceable against the defendants on the *Rogers* v. *Hosegood* principle, because the conveyance to B had not defined the premises (i.e., the first shop) as the premises for the benefit of which the covenant had been taken. In his judgment, the land for the benefit of which a covenant is taken must be clearly defined in the instrument which contains the covenant if the covenant is to be sufficiently annexed to the land to pass to an assign of the covenantee without express assignment, and for this proposition he relied on a passage from the judgment of James, L.J., in *Renals* v. *Cowlishaw* (1879), 11 Ch. D. 866, at p. 868, to the effect that "to enable an assignee to take the benefit of restrictive covenants there must be something in the deed to define the property for the benefit of which they were entered into." But after examining the plaintiffs' title in the present case, Upjohn, J., came to the conclusion that the benefit of the covenant had been expressly assigned to the plaintiffs. The plaintiffs were, therefore, in a position to enforce the covenant against the defendants on the *Miles* v. *Easter* principle if—and here we come to the main point of interest in the case—the covenant had been taken in favour of "ascertainable" land. The land in question in this case—the first shop—was not in any way described in the conveyance of the second shop to B, but for reasons with which this article is not immediately concerned, if it was permissible to look at the circumstances surrounding the sale of the second shop to B, it was clear (as the learned judge eventually found and held) that the covenant under consideration had been taken by A for the protection of the business of an ironmonger which she then carried on in the first shop.

It was argued by the defendants that in order that a covenant not in its inception annexed to particular land may be sued upon by an assignee of the benefit thereof, the assignee must be able to satisfy the court that the deed containing the covenant defines, or contains something to define, the land for the benefit whereof it was entered into, and for this argument reliance was placed on a passage to this effect in the judgment of Bennett, J., in *Miles* v. *Easter* [1933] Ch., at p. 625. The authority which Bennett, J., had cited in support of this view was the portion of the judgment of James, L.J., in *Renals* v. *Cowlishaw* which has already been quoted. This argument of the defendants was rejected by Upjohn, J., for two reasons. In the first place, he thought that the passage from *Renals* v. *Cowlishaw* did not support the statement of the law for which Bennett, J., had cited it, because the latter case was concerned not with an assignment of a covenant, but its annexation to land. And in the second place, *Miles* v. *Easter* went to appeal, and although the decision of Bennett, J., in that case was affirmed, the Court of Appeal expressed its views on the relevant law in terms somewhat different from those used by Bennett, J. The proposition in the headnote to this case "that the covenant was taken for the benefit of ascertainable land capable of being benefited by the covenant" summarises a portion of the judgment of the court (which was delivered by Sir Mark Romer, L.J.), who, after stating that the land for the benefit of which the covenant is taken must be land which is capable of being benefited thereby, went on to say (p. 631) that "this land must be 'ascertainable' or 'certain' . . . For, although the court will readily infer the intention to benefit the other land of the vendor when the existence and situation of such land are indicated in the conveyance or have been otherwise shown with reasonable certainty, it is impossible to do so from vague references in the conveyance or in other documents laid before the court as to the existence of other lands of the vendor, the extent and situation of which are undefined."

Upjohn, J., held that this statement of the law entitled him to look beyond the conveyance of the second shop to B to determine the question of the enforceability of the covenant, and on considering the surrounding circumstances he concluded that the land for the benefit of which the covenant had been taken was A's shop, i.e., the plaintiffs' premises. On this footing the plaintiffs were entitled to enforce the covenant.

The result of this decision is to underline the difference of opinion expressed on this question by Bennett, J., and the Court of Appeal in *Miles* v. *Easter*. For the former, a covenant was only taken in favour of ascertainable land if it was possible to ascertain the land by looking at the conveyance or other instrument which contained the covenant; for the latter, it was sufficient if the land was defined in the relevant instrument or could otherwise be shown with reasonable certainty. The precise effect to be given to these last words has been the subject of much discussion in the last twenty years, but the general feeling among conveyancers who have given thought to the problem has, I think, been that they were intended to include within the principle of enforceability laid down in this case covenants taken in favour of land which, although not exhaustively defined in the instrument containing the covenant, could be ascertained by reference to documents mentioned in the instrument. It is now seen that this view was too cautious, and that evidence of matters wholly *dehors* the instrument containing the covenant is admissible to indicate the existence and situation of the land sought to be protected by the covenant.

Perhaps this extension of the principle of *Miles* v. *Easter* was inevitable, since an instrument which exhaustively defines the land for the benefit of which a covenant is regarded as having been entered into, either within itself or by reference to other existing documents, can usually be construed as annexing the benefit of the covenant which it contains to that land, and if there is to be room for the application of the principle on which *Miles* v. *Easter* was decided, as distinct from the principle which I have associated with the *Rogers* v. *Hosegood* type of case, it must be found in the kind of circumstances which arose in the present case. But be that as it may, this case will add to the difficulties of the conveyancer who is called upon to advise a purchaser as to the possibility of a covenant restricting the use of the premises being enforced against him. In the past, if the instrument imposing the restriction contained no definition, either expressly or by reference to other documents, of the vendor's land, it was pretty safe to advise that an assign of the covenantee could not enforce the covenant against the purchaser. From now on more considerable investigations will be necessary before an opinion on a question of this kind can be given, and indeed cases may arise where the conveyancer, working on the only evidence which is available to him, will be unable to express a view on such a question at all. But perhaps it is a little early to draw any final conclusions from this decision, or to make any general comments thereon except this: the trend of the past half-century has been to limit the circumstances in which restrictive covenants made between vendor and purchaser may be enforced; is the present case the precursor of a new era, in which covenants of this kind will be more commonly upheld?

"A B C"

Landlord and Tenant Notebook

REQUIREMENTS OF A FORFEITURE NOTICE

THE judgment delivered in a recent possession case heard in Blackpool County Court is of interest as illustrating the need for care when seeking to operate a proviso for re-entry.

The facts were that the tenant of a small boarding-house in the town mentioned had covenanted in her tenancy agreement "personally to reside in the said dwelling-house, and not to assign, sub-let (by any form or manner of tenancy) nor part with the possession of the whole or any portion of" the premises. In the course of the proceedings, it appeared that she had either never been aware of, or had else forgotten, the existence of this clause and of the forfeiture clause which covered breach of any covenant; but, apart from the fact that a plea based on ignorance was not persisted in, the effect never became relevant.

For what happened was as follows: On 31st July, 1951, she sold "the goodwill and effects" of her boarding-house business to two other ladies; and she then moved out and they moved in and carried on the business, no assignment of the term of the tenancy being executed. In January of this year the landlord (successor in title of the grantor) became aware of what had happened and her solicitors then wrote to the tenant's solicitors. The important part of the letter read: "Much to our client's surprise, she has received a visit from two ladies of the name of Hernshaw [in fact, it was Earnshaw] who say that they are in possession of the property and bought the contents from Mrs. Warren [the tenant] for £1,200 in August last . . . We have the tenancy agreement before us which is dated the 7th September, 1944, and which contains a specific prohibition against assignment and sub-letting. In the circumstances, our client can only take ejectment proceedings and we give you the information as a matter of courtesy as we are quite sure you would not have been consulted with regard to the alleged sale of the valuation." [Actually, the tenant had asked for consent which had been refused; the explanation being that though, as she believed, there were no restrictions on alienation, she wished to avoid the possibility of trouble.] The letter concluded with a mention of Mrs. Warren's present address.

This letter, it had to be argued in the action for possession which followed, fulfilled the requirements of a forfeiture notice, i.e., a notice "(*a*) specifying the breach complained of; and (*b*) if the breach is capable of remedy, requiring the lessee to remedy the breach; and (*c*) in any case, requiring the lessee to make compensation in money for the breach" (Law of Property Act, 1925, s. 146 (1)). It has long been settled, as the learned county court judge pointed out, that despite the "in any case," (*c*) can be omitted if the landlord does not want monetary compensation. But in His Honour's judgment, there were at least three deficiencies which would prevent the letter from fulfilling the conditions.

First, it failed to specify the breach complained of. There were four covenants: personally to reside, etc.; not to assign; not to sub-let; and not to part with possession. The first and fourth had been broken, but these breaches were not mentioned in the letter, which alleged breaches of the prohibitions against assignment and sub-letting only; the statement that the two visitors had told the plaintiff that they were in possession and the reference to the tenant's present address did not amount to a specification of breaches of the first and fourth covenants. And while there might well have been an equitable assignment, such would not constitute a breach; the learned judge cited *Gentle* v. *Faulkner* [1900] 2 Q.B. 267 (C.A.) (declaration of trust for benefit of creditors; one of those decisions made when there was no power to

relieve against forfeiture for prohibited assignment, as to which see 96 SOL. J. 307).

Secondly, there was a failure to call upon the tenant to remedy the breach if capable of remedy. Here the judgment makes the point that personal considerations are immaterial; it might be that the tenant would be unable to return the £1,200, etc., but the subsection did not say "if the lessee is able to remedy the breach," it said "if the breach is capable of remedy." The position was very different from that revealed in such cases as *Rugby School (Governors)* v. *Tannahill* [1935] 1 K.B. 87 and *Hoffman* v. *Fineberg* [1949] Ch. 245 (premises given a bad name through being used for gambling or immoral purposes); *Egerton* v. *Esplanade Hotels, London, Ltd.* [1947] 2 All E.R. 88 and *Borthwick-Norton* v. *Romney Warwick Estates, Ltd.* [1950] 1 All E.R. 798 (C.A.), are other recent cases to the same effect (see 93 SOL. J. 690).

The distinction and difference granted, it does seem that, if the tenant were an equitable assignor and one with unlimited means, it might have been considered impossible to remedy the breach. The point appears to be a new one, and it may be open to question whether the fact that a bargain could be made which would undo the wrong committed makes such a breach capable of remedy. It is not as if one were dealing with an ordinary complaint of disrepair, neither is it exactly as if someone were required to unscramble eggs; but at all events, no harm can be done by including the requirement prescribed.

The third defect was put in this way: "I find it most difficult to believe that the writer had s. 146 in his mind at all, and I am unable to hold that the recipient of the letter could reasonably suppose that it was intended to comply with the requirements of the section and to perform the condition precedent which the section imposes." While substantially in agreement, I would respectfully submit that this pronouncement goes further than is necessary. If ignorance of the law does not excuse, neither should it invalidate; the requirements could be fulfilled if neither party had ever heard of the section. (One might recall the case of *Cramer* v. *Mott* (1870), L.R. 5 Q.B. 357, in which a lady who knew nothing about the law of distress for rent and its intricacies was held to have distrained on a piano hired by her (or her husband's) lodger, when she told the owner's intending removers that the instrument would not leave the house unless rent owed by the hirer was paid).

These three points made it unnecessary to deal with the question of service, but, the reference to courtesy apart, it might well be doubted whether that requirement had been satisfied. The statute does make it easier to serve a forfeiture notice than a notice to quit; s. 196 is designed to relieve the landlord and his solicitor of the worry that may afflict them when the tenant cannot be found; but the section does not in terms authorise service on an agent. Possibly this was in the learned judge's mind when he said "In these circumstances it is perhaps superfluous to consider whether apart from its deficiencies . . . the letter . . . can be said to be a notice served upon the lessee 'within the meaning of the subsection'." And, having decided the case upon a preliminary point, His Honour likewise refrained from expressing his opinion on questions of whether the Rent Acts applied, and, if so, whether it would be reasonable to make an order for possession, which had been argued. For these, as the judgment observes, may be debated in future proceedings; and the same applies to a possible question about the validity of a notice to quit given in June, 1951, and expiring on 28th February, i.e., after the alleged forfeiture and before the action based thereon was commenced, and which could not, therefore, play any part in the proceedings. But the learned judge indicated that, as the agreement provided for "six calendar months' notice . . . to expire on the last day of February in any year of the tenancy," and 28th February was not the last day of that month in the year 1952, the validity of the notice might be questioned.

It may be that the landlord, having licked her wounds (likely to be serious; both the tenant and the "equitable assignees" were sued, and were awarded costs on scale 3), will renew her attack, basing her claim either on regular forfeiture proceedings or on the notice to quit; and it is not my function to discuss the possibilities. But if The Law Society had been holding its annual conference at Blackpool this year, those attending might well have found this particular boarding-house attractive.

R. B.

HERE AND THERE

QUESTION OF CONVENTION

IF you look closely at the national life of England you will see that it consists of an interlocking system of any number of semi-secret societies, all with a few rules which don't matter very much (because they could be revised or reversed any time convenience demanded and no harm done) and an enormous invisible network of unwritten conventions which do matter tremendously because it is on them that the conduct of affairs ultimately depends. This is, of course, very puzzling and irritating to those foreigners who, having infiltrated themselves into our midst and impenetrably disguised themselves with English-sounding names, set out (with their alien preconceptions of codes and constitutions) to use the Legislature and other propagandist vantage points to attempt to remould our little world nearer to their heart's desire and get everything neatly taped or (in the words of the poet) "to straighten out the crooked road an English drunkard made." All this has a certain relevance to the question which has been agitating the legal world for some days: Can a judge return to the Bar or is the Bench a bourne from which no traveller returns? Any foreigner, of course, could answer the question, so far as his own country was concerned, without a moment's hesitation. Not so the English. They look at the matter this way up and that way up, but the thing of ultimate effect will be professional opinion expressing itself through the conventions. In this matter, they say, the conventions were too strong even for that flouter of conventions, the first Lord Birkenhead. With his lavishly expensive outlook on life, he certainly tired of the impoverished status of an ex-Lord Chancellor, "a shabby old gentleman with £5,000 a year," and anyway he was neither shabby nor old—the third youngest Lord Chancellor ever and one who, to the end of his days, radiated the aura of an Oxford buck. Even he was dissuaded from any overt attempt to return to the Bar and eventually he confined himself to the less spectacular gesture of going into the City. That created scandal enough in some quarters where it was felt that he was thereby neglecting a moral obligation to assist the Law Lords in the hearing of appeals. Perhaps even now we are a shade too close to the event to tell the full and authentic story of the high-minded Attorney-General who waited on him in his home to remonstrate with him and what manner of reception he got.

RETURN TO THE BAR

IT seems to be generally assumed that no judge of the superior courts has ever returned to practice at the Bar. (Colonial judges, of course, don't count.) It's certainly long

enough since any of them did it for the memory to have faded, but it undoubtedly used to happen down to the seventeenth century. Lord Chief Justice Pemberton, for instance, did it twice. In May, 1679, he was appointed a Justice of the King's Bench, but his chief, Scroggs, C.J., did not take to him and in twelve months he was unseated and back at the Bar. In April, 1681, it was his turn to displace Scroggs as Chief Justice. Then in January, 1683, he changed to the quieter and less controversial atmosphere of the Common Pleas, still as Chief Justice. In the following September he was again dismissed and again returned to the Bar. Nor did he lack suitable employment, for he was chosen as leading counsel for the defence in the trial of the seven bishops. He was certainly not the only former judge at that time to resume practice. Off-hand I can think of Sir William Ellis, who lost his appointment in the Common Pleas in the sixteen-seventies, and there were others. But since then the conventions have clearly changed, though the change can hardly be rationalised on the ground of greater aloofness and more majestic dignity in days when his lordship stands in bus queues like any usher and may find himself travelling home in the Tube elbow to elbow with the character he has just released on bail. Actually a return to the Bar may now be impeded by technical difficulties which did not formerly exist. Until the great Judicature Act pulled our judicial system to bits and reconstructed it, an essential qualification for appointment to a common law judgeship was to be a serjeant. The serjeants in their glory were alike the leaders of the Bar and the occupants of the Bench, a quasi-sacerdotal order segregated from the rest of the legal world in Serjeants' Inn. Once a serjeant always a serjeant, on the Bench or off it. A former judge was still a serjeant, so why should he not resume and exercise a serjeant's privileges at the Bar? But now it is otherwise. There is only call to the Bar and call within the Bar. Is not one called to the Bench automatically called away from the Bar? Surely one call must annul the other. And can a man be simultaneously Her Majesty's judge and Her Majesty's counsel? Surely not. The renunciation of his ermine would not *ipso facto* recall the former judge's silk or even his stuff.

USEFUL VENTILATION

SINCE the Press has been so explicit there is no indiscretion in recalling that it is Donovan, J., and Lloyd-Jacob, J., who have been mentioned in connection with this particular case of conscience and of second thoughts—a theoretical case since the paper that started the hare has now made it clear that there has not been "any formal approach" to Lord Chancellor, Bar Council or Benchers. Well, even so, a good purpose has probably been served (and served as usefully as if it had been designed) in ventilating or shaking out in the open air the peculiarities of the judges' salaries, so quaintly old-world, so charged with the nostalgia of a social significance long since departed. Something will be gained if it brings home to whatever guardian spirit broods behind the Treasury that even the prospect of an old age guaranteed free from actual destitution (now the principal attraction of the Bench) may not with the best and most energetic men prove an irresistible and conclusive argument for accepting a judgeship. Often the financial sacrifice of renouncing practice reaches the point of the spectacular. (The late Lord Greene was an outstanding example of this.) Even so, there was no rule in *Usher's* case (see [1952] A.C. 231) applicable to judges, no deduction allowed from their salaries for income tax purposes in respect of forensic earnings "forgone." There might well be. After all, this is not their affair alone. We all have a vested interest in the judges of England. The best material is available and we can't afford to lose it.

RICHARD ROE.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

IMMUNITY OF SOVEREIGN: WAIVER BY SUBMISSION TO JURISDICTION

Sultan of Johore *v.* Abubakar Tunku Aris and Others

Viscount Simon, Lord Porter, Lord Oaksey, Lord Radcliffe and Sir Alfred Bucknill. 22nd April, 1952

Appeal from the Court of Appeal of Singapore.

In consequence of a dispute between the Sultan and his eldest son, the first respondent, as to entitlement to certain lands in Singapore, the Sultan made an application to the Japanese court during the occupation, and that court made a decree in his favour in June, 1945. The respondents issued a summons in the High Court for leave to appeal against the Japanese decree under s. 3 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, which provides that parties to proceedings in a Japanese court may apply for the order to be set aside or for leave to appeal. The Sultan then issued a summons to stay the proceedings on the ground that he was a sovereign ruler. The High Court, affirmed by the Court of Appeal, dismissed that summons. On appeal by the Sultan to the Privy Council, it was debated (1) whether the Sultan was a foreign sovereign who could not be impleaded against his will; (2) whether, if so, he had waived his immunity by instituting proceedings in the Japanese court; and (3) if not, whether that immunity extended to a case involving title to immovables within the jurisdiction of the court.

VISCOUNT SIMON said that (1) must be decided in favour of the Sultan, in view of the terms of a letter written by the Secretary of State to the Malay rulers, which must be accepted as conclusive. As to waiver, the Sultan himself had invoked the jurisdiction of the Japanese court. Accordingly, if the respondents' proceeding were in the nature of an appeal to a court of competent jurisdiction, the Sultan could not object to being made a respondent, as his original submission bound him to accept the jurisdiction on appeal. If, on the other hand, the respondents' application was a new proceeding, his objection was valid (*Duff Development Co., Ltd.* v. *Kelantan Government* [1924] A.C. 797; 40 T.L.R. 566). Their lordships were of opinion that the proceedings under the Ordinance of 1946 were in the nature of an appeal from and a continuation of the proceedings in the Japanese court; the question to be determined by the High Court was whether the decision of the Japanese court was right or wrong. Such a conclusion made it unnecessary to consider the third question, but it should be stated that their lordships did not consider that it had been finally established in England (and accordingly in Singapore also) that there was an absolute rule that a foreign sovereign could not be "impleaded" in the courts, notwithstanding inferences which might be drawn from *The Parlement Belge* (1880), 5 P.D. 197, and *The Cristina* [1938] A.C. 485; 54 T.L.R. 512. The Chancery Division would adjudicate on the rights to a trust fund in which a foreign sovereign had a possible interest; and the majority of the House of Lords in *The Cristina, supra,* had made a reservation concerning a sovereign's ship engaged in ordinary commerce. Appeal dismissed.

APPEARANCES: *C. P. Harvey*, Q.C., *J. Megaw* and *E. Lauterpacht* (*E. F. Turner & Sons*); *B. J. MacKenna*, Q.C., and *I. C. Baillieu* (*Peacock & Goddard*); *Sir Lionel Heald*, Q.C., A.-G., and *Frank Gahan* (as *amici curiae*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SOLICITOR AND CLIENT: CONTINUING FIDUCIARY DUTY AFTER TERMINATION OF RELATIONSHIP

McMaster and Another *v.* Byrne

Lord Goddard, Lord Normand, Lord Radcliffe, Lord Asquith of Bishopstone and Lord Cohen. 24th April, 1952

Appeal from the Court of Appeal for Ontario.

The original plaintiff (since deceased) in 1933 was one of three promoters of P Ltd. and received 1,000 shares therein. Later the promoters transferred their shares to C Ltd., the plaintiff receiving 1,000 shares in that company in exchange. The defendant, a barrister and solicitor, acted in both transactions and became secretary of both companies. He later acted for the plaintiff in other matters, including the drawing up of his will, and remained

one of his executors until after the dispute. The plaintiff resigned his directorship in P Ltd. in 1936, and thereafter wished to dispose of his interest. In 1946 an English company was negotiating for the acquisition of P Ltd. at a suggested price of $1,000,000, and on 28th March, 1947, the defendant reported to the board of that company the relevant facts. On the previous 22nd March he had had an interview with the plaintiff, and had obtained from him an option for thirty days to purchase his shares in C Ltd. for $30,000. It was not clear in the evidence what facts regarding the negotiation were then known to the defendant, nor what facts he disclosed to the plaintiff. The option was exercised on 8th April; in June the English company's offer was accepted, and the defendant received $127,000 for his shares. The plaintiff claimed that the relationship of solicitor and client had continued to subsist, and that the defendant was accountable to him for $97,000 profit. Judgment was given for the defendant in the courts of Ontario. The new plaintiffs (the original plaintiff's executors) appealed.

LORD COHEN, delivering the judgment of the Board, said that the material date was that of the interview, not that of the exercise of the option. Although the defendant was not acting for the plaintiff in the transaction in question, the confidence arising out of their previous relationship must be held to have continued up to the material date. Parker, J., had considered this matter in *Allison* v. *Clayhills* (1907), 97 L.T. 709, and had said that "a solicitor may by virtue of his employment acquire a personal ascendancy over a client and this ascendancy may last long after the employment has ceased, and the duty towards the client which arises out of any such ascendancy will last as long as the ascendancy itself can operate"; and had added that a solicitor might acquire special knowledge which it was his duty to disclose to his former client in any transaction between them. Here, their lordships were of opinion that the duty described by Parker, J., was still subsisting in view of the past relationship of the parties in business and private matters. That duty was not discharged unless the defendant disclosed to the plaintiff all material facts within his knowledge, including the facts as to the negotiations with the English company. It was also plain that the onus of upholding the transaction lay on the defendant. Their lordships were not satisfied that there had been full disclosure, and had come to the conclusion that there must be a fresh trial of the issue whether the defendant had discharged the onus resting on him. The plaintiffs had further contended that, if they were successful on the issue of the measure of duty, they were entitled to succeed because the original plaintiff had had no independent advice, basing their argument on an observation of Stirling, L.J., in *Wright* v. *Carter* [1903] 1 Ch. 27, but Parker, J., had commented on that observation in *Allison* v. *Clayhills*, *supra*, and had rightly considered that the rule as to independent advice was not invariable. The question whether it was required would be for the trial judge.

Appeal allowed.

APPEARANCES: *A. C. Heighington*, Q.C. (of the Canadian Bar), and *Frank Gahan* (*Blake & Redden*); *C. F. H. Carson*, Q.C. (of the Canadian Bar), and *Lord Hailsham* (*Charles Russell & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF APPEAL

INCOME TAX: DEPOSITS INTO CHILDREN'S POST OFFICE SAVINGS ACCOUNTS: "SETTLEMENTS"

Thomas *v.* Marshall

Evershed, M.R., Birkett and Romer, L.JJ. 13th May, 1952

Appeal from Donovan, J. (p. 59, *ante*).

The taxpayer opened Post Office Savings Bank accounts for his unmarried infant children in 1933 and 1936, paying in moneys from time to time and making withdrawals for the children's benefit. By 31st December, 1948, there were left in the bank £844 odd on each account; on 24th May, 1945, the taxpayer bought £1,000 3 per cent. Defence Bonds for each child. These bonds were absolute gifts to the children, as were the sums in the savings bank accounts. Donovan, J., held that the interest on the moneys in the bank and on the bonds had to be treated as income of the taxpayer, because the dispositions in favour of the children were "settlements" within the Finance Act, 1936, s. 21 (1), which provides that where by virtue of any settlement during the life of the settlor income is paid to a child, the income shall, for the purposes of the Income Tax Acts, if the child is an infant and unmarried, be treated as the income of the settlor. The taxpayer appealed.

EVERSHED, M.R., said that the Court of Appeal was bound by the decisions in *Hood-Barrs* v. *I.R.C.* (1946), 27 Tax Cas. 385, and *Yates* v. *Starkey* (1951), 32 Tax Cas. 38, and that gifts by way of savings bank deposits and purchase of Defence Bonds were "settlements" within s. 21.

BIRKETT and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *C. Lawson* (*Tyrell, Lewis & Co.*); *Pennycuick*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHANCERY DIVISION

INCOME TAX: CORRESPONDENT OF FOREIGN NEWSPAPER: SALARY PAYABLE ABROAD

Bray *v.* Collenbrander

Danckwerts, J. 2nd May, 1952

Case stated by Special Commissioners.

The taxpayer was employed by a Dutch newspaper as its London correspondent. His employers resided in Holland where his contract with them was made. His remuneration was payable in Holland, part of it was remitted to his family in Holland and another part was paid to a bank in London for the account of the taxpayer. The taxpayer was assessed to income tax under Sched. E to the Income Tax Act, 1918, on the ground that he held a public office or employment of profit within the United Kingdom, within Sched. E, rr. 1 and 6; or, alternatively, that being a person residing in the United Kingdom his annual profits or gains derived from an employment carried on there were assessable under Case II of Sched. D, which was brought into charge of Sched. E by the Finance Act, 1922, s. 18. The Special Commissioners discharged the assessments and the Crown appealed.

DANCKWERTS, J., said that there was no doubt the employment was carried on in the United Kingdom but, having regard to *Great Western Rly.* v. *Bater* (1922), 8 Tax Cas. 231, and *McMillan* v. *Guest* (1924), 24 Tax Cas. 190, it could not be said that the position of a London correspondent held by the taxpayer came within the definition of a public office or employment of profit within r. 6 of Sched. E. It was more difficult to decide whether the taxpayer came within Case II or Case V of Sched. D. He (his lordship) had come to the conclusion that the only legal provision which was binding on the taxpayer's employers under the contract of employment was to pay the salary in Holland and it was only for the convenience of the taxpayer that part of his salary was remitted to London. As the taxpayer's remuneration was payable to him only in Holland and nowhere else, the case was covered by authority, viz., *Bennett* v. *Marshall* [1938] 1 K.B. 591, and the position was within Case V. Consequently, the taxpayer's remuneration was only taxable in respect of the sums actually remitted to this country and the appeal of the Crown had to be dismissed.

APPEARANCES: *J. Millard Tucker*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *F. Heyworth Talbot*, Q.C., and *Desmond Miller* (*Simmons & Simmons*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

ACCIDENT TO STEEL ERECTOR: SAFE MEANS OF ACCESS

Sheppey *v.* Matthew T. Shaw & Co., Ltd.

Parker, J. 8th April, 1952

Action.

The plaintiff's husband, a skilled steel erector in the employ of the defendants, was engaged in painting work on the framework of a building under construction. To reach the ground at the dinner hour, he had to pass along a lattice girder and under a purlin, or climb along the top of the girder; while doing so he fell and was killed. The Building (Safety, Health and Welfare) Regulations, 1948, provide by reg. 5: "Suitable and sufficient scaffolds shall be provided for all work that cannot safely be done on or from the ground or from part of the building, or from part of a permanent structure or from a ladder or other available means of support, and sufficient safe means of access shall so far as is reasonably practicable be provided to every place at which any person has at any time to work." The plaintiff brought an action under the Fatal Accidents Acts and the Law Reform (Miscellaneous Provisions) Act, 1934.

PARKER, J., said that reg. 5 had been considered by the Court of Session in *Carnie* v. *Redpath, Brown & Co., Ltd.* (21st March, 1952); the court held that it imposed an obligation (i) for scaffolding for doing the work, and (ii) for sufficient safe means of access, so far as was reasonably practicable, to workplaces. The deceased was not at his workplace when the accident occurred; he was using a means of access, so the second part of the regulation fell to be considered. "Safe" could not mean "absolutely safe"; the defendants had contended that it meant "reasonably safe," having regard to the fact that steel erectors were accustomed to working and moving on open structures at great heights. But the regulations were made to safeguard workmen from careless acts, and "safe" must indicate a degree of safety which foresaw that workmen would not always exercise a high degree of care for their own safety. To adopt the words of du Parcq, L.J., in *Walker* v. *Bletchley Flettons, Ltd.* [1937] 1 All E.R. 170, a means of access was unsafe if it was a possible cause of injury to anybody acting in a way in which a human being might be expected to act. The test must be one which took into account the fact that a workman might on occasions make a mistake. Applying that test, it could not be said that there was a safe means of access for a man who, even if he was an experienced steel erector, was encumbered with a pot of paint; also, it could not be said that it was reasonably impracticable to provide a safe means of access. Accordingly the defendants were in breach of their statutory duty, and, though it was not necessary to decide it, of their common-law duty also. Judgment for the plaintiff.

APPEARANCES: *M. Everett* (*W. H. Thompson*); *M. Jukes* (*Clifford-Turner & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PUBLICATION OBSCENE IN PART: WHETHER WHOLE TO BE DESTROYED

Paget Publications, Ltd. *v.* Watson

Lord Goddard, C.J., Oliver and Byrne, JJ.
24th April, 1952

Case stated by a metropolitan magistrate.

The police seized a number of copies of a publication called "Slick Bedtime Stories" which the appellants were holding for the purpose of sale. At the hearing of a summons under the Obscene Publications Act, 1857, it was contended for the appellants that the books were not obscene, but that if the illustrations on the covers were held to be obscene, the covers only should be destroyed. The magistrate found that the illustrations inside the covers were obscene, but that the remainder of the contents were not, and ordered the books to be destroyed, holding that they were indivisible, and that to deal separately with separate parts of the book was to act as a censor, which was not the function of the court.

LORD GODDARD, C.J., said that if the court had had to deal with the question of obscenity, they would have agreed with the magistrate's finding. But the point of law raised was unarguable. An obscene publication need not be obscene on every page; very few publications were so. If it was an obscene publication, then it must be destroyed; the magistrate's order was right.

OLIVER and BYRNE, JJ., agreed. Appeal dismissed.

APPEARANCES: *J. A. T. Hanlon* (*Brandon & Nicholson*); *Maxwell Turner* (*Director of Public Prosecutions*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

TOWN AND COUNTRY PLANNING: COMPULSORY PURCHASE ORDER: PLANNING PERMISSION GRANTED WITHOUT LANDOWNER'S PRIVITY

Hanily *v.* Minister of Local Government and Planning

Parker, J. 29th April, 1952

Motion to quash compulsory purchase order and confirmatory order by the Minister.

In January, 1950, H, the owner of a small plot of land, on which were some derelict cottages, was in treaty for the sale of the land to B, who wished to build a small factory. Unknown to H, B had already obtained planning permission from the local planning authority. The parties failed to come to terms, as H was asking £2,100, while B was unwilling to pay more than £450, the existing use value. B then requested the Central Land Board to exercise their powers under s. 43 of the Town and Country Planning Act, 1947; but H refused to treat with them at a lower price. H was then approached by a builder who wished to erect a workshop, and agreed to sell him the plot for £1,750. While the draft contract of sale was under consideration, the Board, on 14th July, made a compulsory purchase order under s. 43, which was confirmed by an order made by the Minister on 20th December, after a public hearing at which H was represented. H now moved the court to set aside the orders as invalid, on the grounds (i) that they were made, not for the proper purpose of the Board, bringing land into development, but for the purpose of preferring one developer to another, it being contended that the compulsory powers of s. 43 could only be used if development was being held up; (ii) that there was no planning permission in force at the material time, as the application for permission had not been made by H or with her knowledge or consent.

PARKER, J., dealing first with the second question, said that the Act was silent as to who should be the applicant for permission to develop. In *Ayles* v. *Romsey and Stockbridge R.D.C.* (1944), 88 SOL. J. 135, it had been said that an applicant under the similar provisions of the Town and Country Planning Act, 1932, need not necessarily have a present interest in the land, and that case was at least authority for the proposition that it was not everybody who could apply. It would seem that, in the absence of any statutory directions, anyone who genuinely hoped to acquire an interest in the land could properly apply. There was also no provision anywhere for notifying the owner of such an application, and while the consideration of such an application might well be in the nature of a judicial proceeding, there was no ground for saying that the owner should be given an opportunity of being heard. Even if the applicant was right on this point, and the planning permission invalid, that did not make the orders *ultra vires*, as they merely gave authority for compulsory purchase; and valid planning permission might be obtained before the purchase was actually effected (see *Travis* v. *Minister of Local Government and Planning* [1951] 2 K.B. 956). The other contention of the applicant was based on a consideration of the speeches in *Earl Fitzwilliam's* case [1952] 1 T.L.R. 521; 96 SOL. J. 193, but there was nothing in those speeches to indicate disapproval of the view of the Court of Appeal in the same case, that the Board might exercise their powers to prevent sales at more than existing use value. That was what the applicant had been trying to do. The case failed on both points. Motion dismissed.

APPEARANCES: *Sir A. S. Comyns Carr*, Q.C., and *J. G. Kekwick* (*Stow & Co.*); *Sir Lionel Heald*, Q.C., A.-G., and *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

PRACTICE NOTE

CONDITIONAL BINDING OVER OF WITNESSES

22nd April, 1952

LORD GODDARD, C.J., said that the court desired to call the attention of magistrates and of their clerks to the desirability of exercising more frequently their powers of binding over witnesses under s. 13 of the Criminal Justice Act, 1925. The judges were finding that that power was hardly ever being exercised, so that many witnesses were put to needless trouble in attending assizes and quarter sessions and much unnecessary expense was thereby incurred. Particular attention should be directed to rr. 8 and 9 of the Indictable Offences Rules, 1926. It frequently happened in cases of murder and manslaughter, to take common instances, that several witnesses had to be called to prove the identification or the disposal or care of the body of the deceased, or the sending of parts of the body for analysis, or matters of that sort. The evidence of such witnesses was nearly always purely formal, and if there was no challenge to their evidence they should only be conditionally bound over. So, too, in cases where the carriage or delivery of goods had to be traced, it might be, through several hands. It was particularly desirable that medical men should only be conditionally bound over if their evidence was unchallenged, and really only formal, as was often the case in charges of carnal knowledge or wounding where there was no dispute as to the nature and extent of the injuries. The instances given were illustrative only, and not meant to be exhaustive. The rules made ample provision for securing the attendance at trial of witnesses conditionally bound over, if they were needed, and it was to be hoped that that power would be much more frequently used than in the past. The committing justices must inform the accused of his right to require the attendance of a witness conditionally bound over and of the steps to be taken for securing his attendance.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

London County Council (Money) Bill [H.C.] [14th May.
Rochdale Canal Bill [H.C.] [15th May.

Read Second Time :—

National Trust for Scotland Order Confirmation Bill [H.C.] [15th May.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the National Trust for Scotland.

Read Third Time :—

City of London (Various Powers) Bill [H.C.] [14th May.
Edinburgh Merchant Company Endowments (Amendment) Order Confirmation Bill [H.C.] [14th May.
Governesses' Benevolent Institution Bill [H.L.] [14th May.
London County Council (Holland House) Bill [H.C.] [14th May.
Motherwell and Wishaw Burgh Order Confirmation Bill [H.C.] [14th May.
Tottenham Corporation Bill [H.L.] [13th May.

In Committee :—

National Health Service Bill [H.C.] [13th May.

B. Questions

The Lord Chancellor stated that he had now appointed a **Rule Committee for Magistrates' Courts** in accordance with the provisions of s. 15 of the Justices of the Peace Act, 1949. As provided by that section, the Committee would be required to make rules for regulating and prescribing the procedure and practice to be followed in magistrates' courts and by justices' clerks. The Lord Chief Justice had agreed to act as chairman, and the other members were: The President of the Probate, Divorce and Admiralty Division of the High Court, The Lord Llewellin, Mr. P. Allen, Major Reginald Bullin, O.B.E., T.D., Mr. T. Anderson Davis, M.B.E., Sir Laurence Dunne, M.C., Sir Leonard Holmes, Mr. J. K. T. Jones, Sir Theobald Mathew, K.B.E., M.C., Mr. Basil Nield, M.B.E., Q.C., M.P., Mr. W. T. C. Skyrme, T.D., Mr. L. Edgar Stephens, C.B.E., Mr. W. T. Wells, M.P., Mr. J. Whiteside, Mr. J. P. Wilson. The secretary of the committee was Mr. E. L. Bradley, of the Home Office, and the assistant secretary Miss J. Laing, of his department. Anyone wishing to communicate with the committee might do so through the secretary at the Home Office, S.W.1. [14th May.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Brighton Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [15th May.

To confirm a Provisional Order made by the Minister of Transport under the Brighton Corporation (Transport) Act, 1938, relating to Brighton Corporation trolley vehicles.

Corneal Grafting Bill [H.C.] [14th May.

To make provision with respect to the use of eyes of deceased persons for therapeutic purposes.

Derby Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [15th May.

To confirm a Provisional Order made by the Minister of Transport under the Derby Corporation Act, 1930, relating to Derby Corporation trolley vehicles.

Pier and Harbour Provisional Order (Brighton) Bill [H.C.] [15th May.

To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to Brighton.

Pier and Harbour Provisional Order (Great Yarmouth) Bill [H.C.] [15th May.

To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to Great Yarmouth.

Pier and Harbour Provisional Order (Herne Bay) Bill [H.C.] [15th May.

To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to Herne Bay.

Pier and Harbour Provisional Order (King's Lynn) Bill [H.C.] [15th May.

To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to King's Lynn.

Pier and Harbour Provisional Order (Minehead) Bill [H.C.] [15th May.

To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to Minehead.

Pier and Harbour Provisional Order (Seaham Harbour) Bill [H.C.] [15th May.

To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to Seaham Harbour.

Portsmouth Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [15th May.

To confirm a Provisional Order made by the Minister of Transport under the Portsmouth Corporation Act, 1930, as amended by the Portsmouth Corporation Act, 1946, relating to Portsmouth Corporation trolley vehicles.

Read Second Time :—

Blackpool Corporation Bill [H.L.] [13th May.
Leamington Corporation Bill [H.L.] [12th May.
Port of London Bill [H.L.] [12th May.

In Committee :—

Finance Bill [H.C.] [13th May.

B. Debates

On the report stage of the **Defamation (Amendment) Bill,** Mr. N. H. Lever moved the adoption of a new clause relating to unintentional defamation. Its purpose was to give effect to the recommendations of the Porter Committee in cases where authors and publishers were not guilty of any malice or negligence. The remedy would be full vindication of the person injured, rather than damages. The draughtsman had tried to improve to the limit the safeguards for the person injured, and only perfectly innocent people could take advantage of the clause. Sir Leslie Plummer moved an amendment designed to put on the publisher the onus of proving that the author of the damaging statement was completely innocent of an intention of damaging the plaintiff. A publisher was a mere instrument in the publication, but the author might have malicious intent, and he could not see why the publisher should escape if the author had malice. Mr. Cledwyn Hughes, supporting the amendment, said authors were impecunious and publishers often were not—why should the plaintiff suffer and be deprived of damages? The Attorney-General supported the amendment and it was agreed to.

Sir Lynn Ungoed-Thomas moved an amendment designed to limit the protection given by the new clause to protection against general damage. He thought the defendants should still pay for any special damage which they had unintentionally inflicted. Mr. David Weitzman said he knew of no distinction in law between general and special damage. If the plaintiff alleged special damage the whole thing would go to the court and have to be gone into. General and special damage were only distinguished in that one could put a figure on the special damage. Mr. Sydney Silverman said this was an astonishing statement. The difference was that in one case one would say specifically, for example: "I have lost my job as a result"; in the other case, that of general damage, one would say, "My reputation has suffered." He supported the amendment.

Mr. Lever said the amendment would only give damage to a plaintiff for his loss up to the date of trial. This was illogical. He had asked for examples where special damage had been suffered as a result of this type of case, but none had been forthcoming. Sir Frank Soskice said the object of the new clause was to protect the innocent defamer from litigation. The proposed amendment would defeat that object altogether. In any case the special damages in these cases was often quite

small when compared with the general damage. Mr. CHUTER EDE supported the amendment. The House divided, and the amendment was lost. [9th May.

C. QUESTIONS

CONVICTED DOCKERS

Sir WALTER MONCKTON stated that the National Dock Labour Board had not laid down any general rules requiring the dismissal of dock workers convicted of stealing in circumstances not connected with their work. Each case was decided on its merits by the appropriate local dock labour board, subject to a right of appeal to an appeal tribunal. [9th May.

LEASEHOLD LEGISLATION

In reply to a number of questions as to whether legislation would be introduced to keep in force the provisions of the Leasehold Property (Temporary Provisions) Act, 1951, pending the introduction of more comprehensive legislation, the ATTORNEY-GENERAL said that this Act did not expire until midsummer 1953, and the Government was considering what legislation to introduce in its place. [12th May.

FOOD ENFORCEMENT OFFICER'S BEHAVIOUR

Mr. J. LANGFORD-HOLT asked the Minister of Food whether his attention had been drawn to the statement made by the stipendiary magistrate at the West London Police Court on 7th May regarding the behaviour of an enforcement inspector of his Department and what disciplinary action he had taken. Dr. HILL said it was regretted that, in the course of cross examination, this officer had made an inaccurate observation on the legal position, which had been immediately corrected by the legal representative of the Department. These officers had no power not possessed by the police, nor had they any right of entry into private premises. In the particular circumstances of the case in question, it was not proposed to take disciplinary action. [19th May.

MINISTRY OF PENSIONS CLAIMS (ONUS OF PROOF)

Mr. AMORY said that the kind of evidence required to discharge the onus of proof imposed on him by the Royal Warrant in rejecting claims arising from leukemia and other diseases of uncertain origin had been clearly defined in judgments in the High Court. In considering such evidence in individual cases the applicant was always given the benefit of any reasonable doubt. [13th May.

SCHEDULE A ASSESSMENTS (REVALUATION)

Mr. BOYD-CARPENTER stated that the next revaluation for the purpose of assessments to income tax under Sched. A would not take place until the rating revaluation had been completed. This was done now by the Inland Revenue authorities, and it was administratively convenient to complete this before embarking on the question of Schedule A income tax. [15th May.

TRUSTEE INVESTMENTS

Brigadier MEDLICOTT asked the Financial Secretary to the Treasury whether he was aware that the limitations of the existing list of trustee investments authorised by law were causing great hardship to a large number of people whose only means of livelihood was from a small range of investments. When considering the matter would he consider the possibility of amending the law so that the list could be revised at intervals by the Public Trustee, for example, acting on advice from The Law Society, the Council of the Stock Exchange and other suitable and responsible bodies? Mr. BOYD-CARPENTER said he realised that this was a difficult problem which sometimes caused difficulties to trustees. The Government was looking at the problem, but as Brigadier Medlicott would know from his own professional experience, it was not free from complications. [15th May.

DEATH DUTIES (PRIVATE COMPANIES)

Mr. POWELL asked whether the Chancellor of the Exchequer was aware that the present procedure for the valuation of shares of private companies caused considerable inconvenience to small companies when death duties had to be paid, and whether he would carry out an investigation into the problem. Mr. BOYD-CARPENTER said that a number of representations on the subject had been received and the Chancellor of the Exchequer was ready to consider any concrete evidence of hardship which was submitted to him. [15th May.

RENT RESTRICTION: AGRICULTURAL COTTAGE

Mr. TOM DRIBERG asked the Minister of Agriculture to investigate a case in which the Essex Agricultural Executive Committee issued an agricultural cottage certificate to a person who was neither the owner nor the farmer of the farm for whose proper working the occupation of an urban dwelling-house, three miles from the farm, was said to be necessary. Sir THOMAS DUGDALE said that he was satisfied that the certificate in question had been properly issued. The applicant shared with the owner of the farm the responsibility for farming the land, and the Essex Agricultural Executive Committee had been satisfied that the work of the head cowman was necessary for the proper working of the holding.

The Committee, when considering the issue of a certificate, had no power to take into account possible hardship to the sitting tenant, or the fact that the cottage was situated some miles from the farm. It was for the county court to consider all matters bearing on the reasonableness of granting an order for possession. [15th May.

STATUTORY INSTRUMENTS

Angus Fire Area Administration Scheme Order, 1952. (S.I. 1952 No. 920 (S.39).) 8d.

Control of Aviation Spirit Order, 1952. (S.I. 1952 No. 929.)

Cotton Waste Reclamation Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 906.) 6d.

County of Brecknock (Electoral Divisions) Order, 1952. (S.I. 1952 No. 909.)

Fire Services (Pensionable Employment) Regulations, 1952. (S.I. 1952 No. 931.) 5d.

Firemen's Pension Scheme Order, 1952. (S.I. 1952 No. 944.) 1s. 5d.

Fustian Cutting Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 905.) 6d.

Import Duties (Drawback) (No. 5) Order, 1952. (S.I. 1952 No. 908.)

Linoleum (Maximum Prices) Order, 1952. (S.I. 1952 No. 907.) 8d.

Draft **National Assistance** (Adaptation of Enactments) Regulations, 1952. 5d.

National Insurance (Modification of Local Government Superannuation Schemes) (Amendment) Regulations, 1952. (S.I. 1952 No. 938.)

Newsprint (Prices) (Amendment No. 6) Order, 1952. (S.I. 1952 No. 933.)

North of Scotland Hydro-Electric Board (Constructional Scheme No. 63) Confirmation Order, 1952. (S.I. 1952 No. 946 (S.41).)

Ostrich and Fancy Feather and Artificial Flower Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 919.) 6d.

Paper (Prices) (No. 2) (Amendment No. 6) Order, 1952. (S.I. 1952 No. 934.)

Public Health (London) (Rate of Interest) Order, 1952. (S.I. 1952 No. 925.)

Public Service Vehicles (Licences and Certificates) Regulations, 1952. (S.I. 1952 No. 900.) 8d.

Stamped or Pressed Metal-Wares Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 918.) 6d.

Stopping up of Highways (Denbighshire) (No. 2) Order, 1952. (S.I. 1952 No. 943.)

Stopping up of Highways (Glamorganshire) (No. 5) Order, 1952. (S.I. 1952 No. 941.)

Stopping up of Highways (London) (No. 8) Order, 1952. (S.I. 1952 No. 942.)

Stopping up of Highways (Worcestershire) (No. 3) Order, 1952. (S.I. 1952 No. 940.)

Superannuation (English Local Government and Northern Ireland) Interchange Rules, 1952. (S.I. 1952 No. 937.) 8d.

Superannuation (Fire Brigade and other Local Government Service) Interchange Rules, 1952. (S.I. 1952 No. 936.) 6d.

Superannuation (Transfers from the Civil Service to the Fire Services) Rules, 1952. (S.I. 1952 No. 917.)

Water Byelaws (Extension of Operation) (Scotland) Order, 1952. (S.I. 1952 No. 935 (S.40).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Mortgage of Leaseholds—ASSIGNMENT AFTER 1925 OF MORTGAGE TERM—WHETHER A DISCLAIMER UNDER THE LAW OF PROPERTY ACT, 1925, SCHED. I, PARA. 7 (*m*)

Q. We are acting in connection with the assignment of a ground leasehold having about nine years to run, and are considering the future liability for dilapidations under the full repairing covenants in the lease. The lease was granted in 1867 for a term of ninety-nine years from 24th June, 1861. In 1867 it was mortgaged by the lessee by sub-demise for the residue of the term less ten days, and the mortgage contained a declaration of trust of the nominal reversion. In 1868 the mortgagees sold the property, the assignment excluding the last ten days. There were various further assignments. On 1st January, 1926, when the Law of Property Act, 1925, came into force the term (less ten days) was vested in S and M as trustees of a certain will. On 20th May, 1926, S and M assigned the premises to K, such assignment containing a recital that the vendors had agreed to sell to K the premises comprised in the lease for the residue of the term thereby granted except the last ten days thereof, and it was witnessed that in pursuance of the said agreement, etc., and the habendum followed the same wording. On 16th June, 1926, the Law of Property (Amendment) Act, 1926, came into effect, amending para. 7 of Sched. I to the Law of Property Act, 1925, by adding sub-para. (*m*), which provided (in effect) that a nominal reversion should not vest if before any dealing therewith the person in whom the same would otherwise vest "disclaim it in writing signed by him." Section 7 of the Act provided that the amendment should take effect without prejudice to any title acquired by a purchaser before the passing of the Act. Does the fact that the assignment of 20th May, 1926, purported to exclude the last ten days operate as a disclaimer for the purpose of the 1926 Act? We may add that K mortgaged the property by legal charge in 1930 and further charge in 1936. K died intestate in 1945 and letters of administration were granted to his widow, who in 1946 assented to the property vesting in herself for all the residue (less the last ten days) of the term created by the lease subject to the legal charge and further charge. The widow is now selling and we are acting for her and for the purchaser.

A. The question of whether the assignment of 20th May, 1926, operated as a disclaimer appears to us to be one of intention, and as the Law of Property (Amendment) Act, 1926, had not then come into operation we do not consider that the parties to the assignment could have intended it to operate as a disclaimer, especially as the title derived under the assignment is protected by s. 7 of the 1926 Act. In our opinion, the assignment must be construed having regard to the effect of s. 89 (1) (*a*) of the Law of Property Act, 1925, under which a conveyance by a mortgagee under his power of sale operates to vest the leasehold reversion in the purchaser, unless expressly excepted with the leave of the court. By the definition in s. 205 (1) (xvi), "mortgagee" includes persons deriving title under the mortgagee, and in was held in *Peachey* v. *Young* [1929] Ch. 449 that this also included the absolute assignee of a mortgage term. In these circumstances, we are unable to reach any conclusion other than that the assignment vested the whole term of the head lease in K. We know of no authority in point apart from *Peachey* v. *Young, supra.*

Intestacy—DEATH OF ONE ADMINISTRATOR BEFORE ASSENT—APPOINTMENT OF ADDITIONAL ADMINISTRATOR

Q. Referring to the question and answer in your issue of the 4th August, 1951 (95 Sol. J. 497): an owner of freehold property died intestate in 1942 and administration was granted to two administratrixes in June of that year. One has now died, but before she died administration had been completed, but there has been no assent. There are only two freehold cottages left which have to be sold and a purchaser has been found, but there is now only one administratrix. In these circumstances Key and Elphinstone, vol. I, p. 253, gives a form of assent but advises in a note that it is preferable *first to appoint a new trustee* to act with herself (see p. 169 of vol. I for the precedent for the appointment of a new trustee). I cannot understand how the new trustee and the old trustee can assent to vest the property in themselves. Your answer, of course, put the assent first and then the appointment.

A. We share the doubt of our subscriber as to the validity of an assent by the old and new trustees in favour of themselves. It is by no means clear that an administrator who has not assented can appoint a new trustee as suggested in the note in Key and Elphinstone. *Re Yerburgh* [1928] W.N. 208, although not very fully reported, is certainly an authority against such a proposition. The matter is dealt with at length in Williams on Assents, App. II, where attention is given to the specific problem arising in the present case, where one of two administrators has died without an assent having been executed. While it is true that there is no provision in the Administration of Estates Act, 1925, to the effect that a survivor of two administrators cannot act where two are required to be appointed in the first instance, the correct course as stated in *Re Yerburgh, supra,* is for an application to be made for the appointment of an additional administrator. This would, therefore, be the safest course in the present case and the two administrators could then sell as such or assent to the vesting of the legal estate in their own favour upon trust and then sell as trustees.

Change of Name by Divorced Woman

Q. A client of mine was divorced by her husband on the ground of desertion. She now wishes to resume her maiden name and is anxious to do so by documentary evidence (deed poll) and advertisement. What is the simplest means to effect this?

A. There appears to be nothing to compel a married woman to use her husband's surname (cf. *per* Vaisey, J., in *Re Fry* [1945] Ch. 348), and after being divorced she will not even need her husband's consent to enrolment of a deed poll changing her name. Precedents for a suitable deed are to be found in vol. 11 of the "Encyclopædia of Forms and Precedents," 3rd ed., and in No. 1 of the "Oyez Practice Notes" series, "Change of Name." This booklet also contains a form of advertisement suitable for insertion in local or other papers as the circumstances of the particular case may suggest. If it is desired to enrol the deed in the Central Office, for permanent record and ease of obtaining authentic copies, it will be necessary to advertise the deed in accordance with the relevant regulations (S.I. 1949 No. 316 (L.3)), a course which may be considered to render unnecessary a separate advertisement of the intention to resume the maiden name.

Law of Property Act, 1925, s. 40—VERBAL CONTRACT—"INTEREST IN LAND"—RECOVERY OF DEPOSIT

Q. My client ascertained that a kiosk on a pier in a coast town was for sale and he approached the appropriate person. He was given the details and, although my instructions are somewhat indefinite, I assume that the assignment of the lease of the kiosk was the purpose of the transaction. My client, although he expressed himself as interested, was not definite whether he could proceed, and in fact stated that his ability to do so was dependent on the finances of a person with whom he was associated. He was, however, hard pressed by the other party, and in consequence thereof gave a deposit as a sign of his good faith, nevertheless stressing that he was not too sure that he could proceed. He received a receipt but signed nothing himself. As far as I can see, there was certainly no written memorandum, and probably no oral agreement. In such circumstances has he a right to recover the deposit paid?

A. Where a contract for sale must be evidenced by a sufficient memorandum in writing in accordance with s. 40 of the Law of Property Act, 1925, the absence of such a memorandum does not mean that there is no contract, but merely that the contract is not actionable at law. Accordingly, if there is a verbal contract, or a memorandum lacking the signature of the purchaser, the vendor is entitled to retain any deposit paid if the purchaser repudiates (*Monnickendam* v. *Leanse* (1923), 39 T.L.R. 445). In any event it seems to us doubtful whether a lease or licence for a kiosk on a pier is an interest in land within s. 40 so as to require a memorandum in writing. The matter will therefore entirely depend on whether there was a firm verbal contract. If the parties were not *ad idem*, or, as certainly appears the case, the proposing purchaser expressly reserved a right of rescission, there would be no contract and he would be entitled to the return of his deposit (*Chillingworth* v. *Esche* [1924] 1 Ch. 97).

Building Materials and Housing Act, 1945—"Associated" Transactions—Surrender of Lease of Adjoining Land by Vendor of House

Q. X owns a post-war dwelling-house erected under the provisions of a building licence granted by the local authority. The building licence contained a condition limiting the price to be obtained on any sale to £1,400. X holds of Y a lease of a plot of land immediately adjoining the site of the dwelling-house, this plot having the same depth as the dwelling-house site and a frontage of 84 feet to the road. This adjoining plot is part of a much larger plot which X sold to Y two years ago for £600, and is on that basis worth, say, £250. The lease has five years to run and the rent reserved is ten shillings per annum. Y is willing to join with X in the following proposed transaction: X sells the dwelling-house with its site at the controlled price of £1,400. At the same time Y sells the adjoining plot to the same purchaser for £4,550 making the total price paid by the purchaser for the dwelling-house, its site and the adjoining plot £5,950. Simultaneously X surrenders to Y his lease of the adjoining plot in consideration of a payment by Y to X of £4,300, i.e., the difference between the sale price of the plot and the price paid for it by Y two years ago. X thus receives, in effect, £5,700 for the freehold of the dwelling-house and its site and for the residue of his lease of the adjoining plot. Does this composite transaction amount to an infringement by X of the provisions of s. 7 of the Building Materials and Housing Act, 1945, which prohibits the sale of a dwelling-house for a sum greater than the controlled price? Subsection (6) of that Act directs the court to apportion the consideration where a house is sold together with other property. In this case, however, X is dealing with two different people, he is selling the house to the purchaser at its proper price and he is selling the residue of his lease of the adjoining property to Y. Y is not even a nominee acting as a go-between, for he himself sells something to the purchaser quite different, namely, the freehold of the adjoining plot which he bought with other land two years ago, admittedly from X, but coincidentally so and without any intention then on the part of himself or of X of effecting such a transaction as the one now contemplated. Subsection (5) of the section directs the court to deem the consideration for the sale of the house to be increased by such proportion of the consideration for any "associated transaction" as exceeds what the consideration for such associated transaction would have been had it not been associated with the sale of the house. In the case proposed, there are two transactions on the part of X which might be said to be associated. But the opposite party to each transaction is different, namely, Y in the one case and the purchaser in the other. Is the subsection to be construed as referring only to associated transactions between the same parties or does it refer also to such transactions as the one contemplated? Even if the latter construction is correct can it be said that the sum paid *by* Y to X for the surrender of the lease is in any way affected by the price paid *by the purchaser* to X for the dwelling-house?

A. We have given careful consideration to the interesting transaction proposed by our subscribers and also to the provisions of s. 7 (5) of the Building Materials and Housing Act, 1945, the terms of which are, perhaps, not as clear as could be wished. The absence of any definition of "associated" transaction for the purposes of that subsection is not very helpful but leads one to suppose that a wide meaning was intended. We do not, therefore, consider that associated transactions are confined to those involving the same parties and it is, we think, sufficient that the vendor or lessor of the house is concerned in the transaction in some way that will ensure that he receives a benefit from it. The sale of the adjoining property by Y would, perhaps, not of itself be an associated transaction, but in our opinion the surrender, or more particularly the prior agreement to surrender, is such a transaction. In the absence of any such prior agreement Y would be under no obligation to accept X's surrender or pay him the £4,300—it would be obviously to Y's advantage to retain the consideration and allow X's lease to expire. Further, once Y's land had been sold and conveyed to a purchaser he would appear to be the proper person to accept X's surrender. So far as the consideration for the surrender is concerned it seems to us to be clearly affected by the purchase price of the house. If the house had not been sold at such a relatively low figure it is obvious that Y would not have been able to command so high a figure for the sale of his land and to pay a correspondingly high figure to X for the surrender of his lease. One indication of the "association" of the transactions appears to us to be the fact that *only* the purchaser of the house would be willing to pay so highly for Y's land. It also appears to follow that under subs. (6) the purchaser will have a property the market value of which is only £1,650.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

ANNUAL REPORT

The sixty-third annual general meeting of the Society was held at Oyez House, Norwich Street, Fetter Lane, on Tuesday, 20th May. In the absence of the Chairman, Sir W. Alan Gillett, through illness, the chair was taken by Mr. H. Wentworth Pritchard.

In proposing the adoption of the report and accounts, Mr. Pritchard said he particularly regretted the absence of the chairman from the first meeting in the new building, as Sir Alan's wisdom and determination had had a great deal to do with its being in existence.

The chairman's statement circulated with the report and accounts said:—

Almost as I write this, the new building in Fetter Lane is being handed over to the Society by the contractors, and by the time these words are in your hands the work of transferring various departments, principally the printing works of the Society, to this building will have commenced. Three years ago such an event seemed almost fantastic to contemplate. Fortunately, faith has been justified and the problem has been resolved into the solid fact of possession by the combined skill of architect and contractors and the unflagging energy and persistence of your staff under the leadership of Mr. Holroyde.

The material benefits of having a large portion of the Society's works and operations adequately housed under one roof will be patent to you all. Psychologically, the effects are of the greatest importance because unity of accommodation undoubtedly creates an *esprit de corps* in itself and lends an incentive to co-operative work which it is impossible to over-estimate.

For these reasons, I have put the success accomplished in completing the first half of our rebuilding programme in the forefront of these remarks. You will note, by the way, that the annual general meeting is to be held in the new building—a very pleasant feature.

The removal of our London works will be spread over some nine months and we hope by careful planning to minimise loss of production and inconvenience to our customers during the period. When the move is completed, we shall be able to give a printing service that will be second to none in our sphere. Opportunities will in due course be given for shareholders and customers to be shown over the new building.

You will be pleased to see that we have again had a very satisfactory year. The sales easily constituted a new record, being very substantially higher than in the previous year. While a good deal of this increase is due to a substantial rise in the price of paper in the past two years, part of it comes from an increase in the volume of trade.

The profit for the year also constitutes a new record. This is largely due to the higher turnover, but also to the fact that the increase in departmental and head office expenses has lagged behind that of the turnover. The directors again find themselves able to propose an increase in the amount distributed and they accordingly recommend a final dividend of 14 per cent., making 19 per cent. for the year. This dividend is, as you know, not payable on the new shares issued last autumn.

I explained last year the directors' reasons for recommending an addition to the bonus to the staff payable under the articles. Having regard to the year's results, the higher rate of dividend and a further increase in the number of employees qualified to participate, the directors recommend that an amount of £4,250 be added this year, which compares with £5,500 added last year.

It is proposed to add £10,000 to the Rebuilding Reserve, £7,500 to the General Reserve and £12,500 to the Taxation Equalisation Reserve. The last figure is called for as our liability for income tax in respect of the past year is considerably reduced by the effect of initial allowances. We shall not, of course, have the benefit of these allowances on expenditure incurred after the

5th April, 1952. The balance carried forward is £39,501, compared with £26,050 brought in.

Your directors were most gratified by the substantial over-subscription for the 50,000 new shares offered in October, providing as it did evidence of the profession's faith in the future of the Society. The considerable number of new shareholders, both solicitors and employees, will greatly strengthen the Society. Arrangements have already been made with the Legal and General Assurance Society, Limited, to provide in due course the additional funds required in connection with the Fetter Lane rebuilding. The total amount paid in respect of the contract for the new building up to the end of 1951 was £165,440, leaving some £100,000 further to be paid.

We have spent rather less on additions to machinery, plant and type last year than in recent years, but a number of machines have been, or are being, delivered this year for installation in our new London works. Additions to furniture, fittings and motor cars have been rather heavier, the largest item being the re-equipment of our Birmingham shop. The additions under both these headings have been subjected to special depreciation amounting to £5,741, over and above the usual figure.

As a result of supplies being more readily available, our stocks of paper and other goods increased substantially during the year, in bulk as well as in value.

On the expiry of the lease of our Manchester stationery premises we have secured a long lease of convenient premises nearby at 28–30 John Dalton Street, and both the stationery and law-writing departments are now installed there.

You will no doubt wish to know something of the effect of the excess profits levy. We have been unfortunate in the choice by the Government of the years 1947, 1948 and 1949 for the calculation, in accordance with the Finance Bill as introduced, of the standard profit, as 1946 and 1950 were both better years than any of the three chosen. We shall receive some benefit from the substantial amounts ploughed back in this and recent years and I think I can say that the additional tax we shall have to find, although serious, will not be crippling.

The result of the past year's working is of itself sufficient testimony to the energy and efficiency of the staff. I wish to add, however, on behalf of the directors and, I am sure, of all shareholders, our high appreciation of the continued good spirit which prevails on the part of the staff in all their endeavours. Our best thanks are due to them and to our general manager and secretary, Mr. Holroyde.

So far this year there has been some reduction in the volume of our sales, due, I believe, to a falling off in the amount of legal business in some directions. I do not think, therefore, it would be wise for me to hold out hopes that our results this year will equal those of last year.

The report and accounts were unanimously approved, and Mr. Charles Percival Law Whishaw, retiring in accordance with the articles, and Mr. John Venning, retiring by rotation, were re-elected as directors.

The remuneration of the auditors was fixed for the ensuing year.

NOTES AND NEWS

Honours and Appointments

Mr. C. A. J. BONNER, Mr. R. C. VAUGHAN, O.B.E., M.C., Q.C., Mr. G. W. TOOKEY, Q.C., and Mr. DINGLE FOOT have been elected Masters of the Bench of Gray's Inn.

LORD GODDARD has been chosen Reader at the Inner Temple for the Summer Vacation. Mr. BASIL DREWE, Q.C., and Mr. H. I. NELSON, Q.C., have been elected Masters of the Bench. Sir DAVID HUGHES PARRY has been appointed an honorary Master of the Bench.

Mr. J. H. A. SPARROW, O.B.E., M.A., Warden of All Souls College, Oxford, has been elected an honorary Master of the Bench of the Middle Temple.

Mr. J. P. H. ALLON has been appointed assistant solicitor to Devon County Council.

Mr. E. G. THOMAS has been appointed assistant solicitor to Loughborough Corporation.

Personal Notes

Mr. H. A. Davis, Clerk of Devon County Council and Clerk of the Peace, who is to retire in June, has been presented with a portable radio set, fishing tackle and a cheque on behalf of the staff of all departments of the county council and county police.

Mr. W. J. D. Elford, solicitor, of Coventry, was married recently to Miss Peggy J. Brown, of Coventry.

Miscellaneous

The Companies (Liquidation) Branch of the Board of Trade is moving from Lytham St. Annes, Lancashire, on 5th June, 1952. Correspondence after that date should be addressed to the branch at Lacon House, Theobald's Road, London, W.C.1.

The Twelfth Clarke Hall Lecture, by the courtesy of the Treasurer and Masters of the Bench of the Honourable Society of Lincoln's Inn, will be delivered in the New Hall of Lincoln's Inn at 4.30 p.m. on Tuesday, 27th May, 1952, by The Rt. Rev. the Lord Bishop of Croydon on "Faith, Character and Conduct." The Chair will be taken by The Most Rev. the Lord Archbishop of Canterbury.

Divorce business at Leeds at the Summer Assizes, 1952, will commence on 12th June.

The next quarter sessions for the County Borough of Smethwick will be held at the Law Courts, Crocketts Lane, Smethwick, on Friday, 20th June, at 10.30 a.m.

UNITED KINGDOM USE OF GERMAN TRADE MARKS

The Board of Trade have under consideration a number of questions relating to trade marks which were on the register on 3rd September, 1939, in the names of German persons or concerns, living or carrying on business in Germany.

Persons or concerns in the United Kingdom claiming to have a continuing interest in such trade marks arising out of their use since 3rd September, 1939, in connection with goods manufactured in the United Kingdom, are invited to communicate with the Registrar of Trade Marks stating—

(*a*) the numbers (with short descriptions) of the German registered trade marks they desire to continue to use;

(*b*) the extent of their interests in those marks and the source of those interests;

(*c*) whether at 3rd September, 1939, there existed any contract or agreement between them and the German registered proprietors relating to the use of those marks;

(*d*) whether after 3rd September, 1939, they exercised registered user rights in those marks and, if so, for what period;

(*e*) what goods have been or are being manufactured under those marks, and the periods during which the goods were produced.

All communications arising out of this notice should be addressed to: The Registrar of Trade Marks (German marks), The Patent Office, 25 Southampton Buildings, London, W.C.2.

Further public meetings of the Royal Commission on Marriage and Divorce, to hear oral evidence from persons and organisations that have submitted memoranda, will be held on 26th May at 2 p.m. in the Bishop Partridge Hall, Church House, S.W., and from 27th to 29th May at 10.30 a.m. and 2 p.m. in the Caxton Hall, Caxton Street, S.W.

CONSOLIDATION OF ENACTMENTS

Pursuant to s. 1 of the Consolidation of Enactments (Procedure) Act, 1949, in order to facilitate the consolidation of certain enactments relating to the jurisdiction of, and the practice and procedure before, magistrates' courts and the functions of justices' clerks and to matters connected therewith, the Lord Chancellor, on 20th May, 1952, was to lay before Parliament a memorandum proposing corrections and minor improvements in certain of those enactments. The memorandum will be obtainable from H.M. Stationery Office or through any bookseller.

Representations in writing with respect to the memorandum may be made not later than 17th June, 1952, and should be sent in duplicate to the Secretary of the Joint Committee on Consolidation Bills, Committee Office, House of Lords, S.W.1.

CITY OF LEICESTER DEVELOPMENT PLAN

The above development plan was, on 13th May, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the City of Leicester. A certified copy of the plan, as submitted for approval, may be inspected from 9 a.m. to 1 p.m. and 2.30 p.m. to 5.30 p.m. (Saturdays 9 a.m. to 12 noon) at the City Surveyor's Town Planning Department, Town Hall, Leicester. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 12th July, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Leicester City Council and will then be entitled to receive notice of the eventual approval of the plan.

GATESHEAD DEVELOPMENT PLAN

On 30th April, 1952, the Minister of Housing and Local Government approved with modifications the above development plan. A certified copy of the plan as approved by the Minister may be inspected from 9 a.m. to 5 p.m. (Saturdays 9 a.m. to 12 noon) at the Borough Surveyor's Office, Municipal Buildings, Swinburne Street, Gateshead, 8. The plan became operative as from 14th May, 1952, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 14th May, 1952, make application to the High Court.

JAPANESE PROPERTY IN THIS COUNTRY

The Japanese Treaty of Peace Order, 1952 (S.I. 1952 No. 862), which came into force on 7th May, provides for the collection and realisation of Japanese property in accordance with art. 14 of the Treaty, which gives to the United Kingdom the right to seize Japanese property, rights and interests (with certain exceptions) within its jurisdiction. It provides for the appointment by the Board of Trade of an Administrator of Japanese Property with certain powers and duties for those purposes. The Administrator will deal with the proceeds of collection and realisation of Japanese property in this country in accordance with Treasury directions.

Every person who holds, controls or manages Japanese property or owes a debt which is Japanese property is required to furnish particulars thereof to the Administrator within three months from the date when the order came into operation, unless particulars have already been furnished to a Custodian of Enemy Property. A similar obligation is also imposed upon any company, municipal authority or other body, when the Japanese property consists of shares, stocks or other securities issued by such company, authority or body, or any right or interest therein. The Administrator may, by notice, require the production of books, documents or information. The order prohibits any dealing with "Japanese property" as defined except with the consent of the Administrator.

The order gives legal effect to those provisions of the Japanese Peace Treaty and Protocol which require to be made part of municipal law.

The order applies with certain modifications to the whole of Her Majesty's dominions (except the Dominions), including Scotland, Northern Ireland, the Channel Islands and the Isle of Man and to the protected territories specified in Sched. II to the order.

The address for correspondence arising out of the order is the Administration of Enemy Property Department, Lacon House, Theobald's Road, London, W.C.1.

Wills and Bequests

Mr. W. H. Pemberton, solicitor, of Liverpool, left £5,727 (£4,338 net).

Mr. C. E. Pettit, solicitor, of Baker Street, London, W.1, left £14,279 (£13,533 net).

Mr. H. G. Phillips, retired solicitor, of Plymouth, left £10,860. He left £300 to compensate people who damaged their clothes trying to save others from drowning.

Mr. H. Rapson, formerly Town Clerk of Kensington, left £547 (£502 net).

His Honour Judge R. R. Reeve, K.C., left £93,624 (£93,229 net).

Mr. F. S. Thirlby, solicitor, of Derby left £74,905 (£73,307 net). He left £700 to his friend and clerk, Mr. F. T. Lane, who had been in his service for over sixty years.

Mr. A. T. Truman, solicitor, of Bicester, left £33,520.

Mr. H. L. Wilson, solicitor, of Southend-on-Sea, left £32,401 (£16,482 net).

OBITUARY

MR. D. EVANS

Mr. Dudley Evans, solicitor, of Wimpole Street, London, W.1, died on 13th May, aged 63. He was admitted in 1911.

MR. A. R. GREEN

Mr. Albert Robert Green, solicitor, of Shoreham, died on 9th May, aged 78. He was admitted in 1906.

MR. B. PINNIGER

Mr. Broome Pinniger, retired solicitor, of Newbury, has died at the age of 83. He was admitted in 1894.

MR. P. J. RUTTLEDGE

Mr. Patrick J. Ruttledge, T.D., solicitor, of Dublin, a former Minister for Justice, died recently. In recent years he was the officially appointed Solicitor for Minors, remaining a member of the Dail.

SOCIETIES

The annual national conference of the SOLICITORS' MANAGING CLERKS' ASSOCIATION will be held on Saturday, 7th June, at 1.30 p.m., at the Grand Hall, Town Hall, Bournemouth (St. Stephen's Road entrance), followed by a dinner and social at the Princes Hall, Grand Hotel, Bournemouth, at 6.30 p.m. until 11 p.m. The President, Mr. Arthur Bird, will be in the chair. The annual general meeting will be held on Friday, 20th June, at the Old Hall, Lincoln's Inn, London, W.C.2, at 6.15 p.m.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce a musical evening ("Record Pot-pourri") at 6 p.m. on Wednesday, 28th May, at The Law Society's Hall. Inquiries concerning membership and activities of the Society should be addressed to the Society's secretary, c/o The Law Society's Hall, Chancery Lane, London, W.C.2.

At the monthly meeting of the board of directors of the SOLICITORS' BENEVOLENT ASSOCIATION, held on 7th May, 1952, seventeen solicitors were admitted to membership of the Association, bringing the total membership to 7,637. A sum of £2,213 was distributed by way of grants to nineteen beneficiaries; £94 of this sum was in respect of special grants for convalescence, clothing, etc. The directors accepted with regret the resignation of Mr. Gerald Addison as Honorary Treasurer of the Association, which office he had held since 1945. Mr. Charles H. Culross was elected Honorary Treasurer in his place.

At the UNITED LAW SOCIETY, on 7th April, the motion "That in the opinion of this House moral degeneration is causing the downfall of Great Britain" was lost by the chairman's casting vote. On 28th April, the motion "That the reintroduction of corporal punishment is essential for the suppression of crime" was lost by one vote.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).